

04-28348

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Chapter 13 Case:

Case Number BK Y 04-43746-RJK

Ann Kuehn,

Debtor(s)

**NOTICE OF HEARING AND MOTION
FOR RELIEF FROM STAY**

To: The Debtor and other entities specified in Local Rule 9013-3(a).

1. Deutsche Bank Trust Company Americas, as Custodian, fka Bankers Trust Company as Custodian moves the Court for relief requested below and gives Notice of Hearing.

2. The Court will hold a Hearing on this motion at 2:00 p.m., on November 4, 2004, in Courtroom No. 8 West, at the United States Courthouse, at 300 South Fourth Street, Minneapolis, Minnesota.

3. Any response to this motion must be filed and delivered no later than November 1, 2004 which is three days before the time set for the hearing(excluding Saturdays, Sundays, and holidays), or filed and served by mail no later than October 26, 2004, which is seven days before the time set for the hearing(excluding Saturdays, Sundays, and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed on July 6, 2004. The case is now pending in this court.

5. This Motion arises under 11 U.S.C. §362 and Bankruptcy Rule 4001. This motion is filed under Bankruptcy Rule 9014 and Local Rules 9013-1 - 9019-1(d). Movant Requests Relief with respect to exempt property of the debtor subject to a lien.

6. On June 19, 2002, Ann Marie Kuehn aka Ann Kuehn, single made, executed and delivered to Saxon Mortgage, Inc. her Note (hereinafter referred to as the "Note"), in the original principal amount of \$109,600.00 bearing interest from the date thereof at the rate of 7.625% per annum until paid, payable in monthly installments commencing on the first day of each and every calendar month thereafter until the principal and interest were fully paid.

7. On June 19, 2002, to secure the payment of the Note, Ann Marie Kuehn aka Ann Kuehn, single, executed and delivered to Saxon Mortgage, Inc. her Mortgage (hereinafter referred to as the "Mortgage"), mortgaging and conveying certain real estate in Isanti County, Minnesota, legally described as follows:

Lot 3, Block 2, Lynn Mar Addition

which property has an address of: 517 Ashland St. N, Cambridge, MN 55008. The mortgage was filed for record in the office of the Recorder, County of Isanti, on June 24, 2002, as Document No. 300623, and was subsequently assigned to Movant by assignment of mortgage. A copy of the mortgage assignment are attached hereto as Exhibit "A" and made a part hereof by reference.

8. The debtors have filed a modified plan dated September 3, 2004, which was confirmed by subsequent Court Order. The plan provided, among other things that:

"5. Home Mortgages In Default [§1322(b)(5)] - The trustee will cure defaults on claims secured only by a security interest in real property that is the debtor's principal residence as follows. The debtor will maintain the regular payments which come due after that date the petition was filed. The creditors will retain their liens. The amounts of default are estimates only. The trustee will pay the actual amounts of default.

9. Notwithstanding the foregoing provisions of said plan, the debtors have not maintained current payments with respect to said note and mortgage, while this case is pending.

10. Debtors are in arrearage for monthly payments as shown below. The last payment received from Debtors was applied to the August, 2004 post-petition payment as that was the next payment due. Post-petition arrearage include the following:

| | |
|--------------------------|-------------------|
| 2 payments @ \$1,069.74 | \$2,139.48 |
| 2 late charges @ \$38.79 | \$77.58 |
| Attorneys Fees & Costs | \$800.00 |
| TOTAL POST - PETITION | <u>\$3,017.06</u> |

Through Debtors' failure to make current post-petition payments, amounts due and owing include the following:

| | |
|------------------------|---------------------|
| Principal Balance | \$108,092.38 |
| Interest to 7.625 | \$6,229.06 |
| Escrow Shortgage | \$869.82 |
| Accumulated late fees | \$406.36 |
| Attorneys Fees & Costs | \$2,436.04 |
| TOTAL | <u>\$118,033.66</u> |

11. Debtors have claimed said mortgaged property as exempt pursuant to MSA 510.01.

12. By reason of the foregoing, good cause exists to lift the automatic stay imposed by 11 USC section 362 to allow Movant to pursue its remedies under State Law.

13. **This is an attempt to collect a debt and any information obtained will be used for that purpose.** This notice is required by the provisions of the Fair Debt Collection Practices Act and does not imply that we are attempting to collect money from anyone who has discharged the debt under the Bankruptcy Laws of the United States.

Wherefore, Deutsche Bank Trust Company Americas as Custodian, fka Bankers Trust Company as Custodian moves the court:

1. For an Order granting creditor relief from the automatic stay of 11 USC section 362.
2. For such other and further relief as the Court finds just and proper.

Dated: 10-12-11.

Signed: /s/ NANCY A. NORDMEYER

SHAPIRO & NORDMEYER, L.L.P.
 Nancy A. Nordmeyer-121356
 Lawrence P. Zielke-152559
 Attorney for movant
 7300 Metro Boulevard #390
 Edina, MN 55439-2306
 (952) 831-4060

VERIFICATION

I, Dan Arntsen, the Bankruptcy Manager for Fidelity National Foreclosure Solutions, the authorized servicer for movant, the movant named in the foregoing notice of hearing and motion, declare under penalty of perjury, that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on:

10-8-01

Signed:

[Signature]

Fidelity National Foreclosure Solutions
1270 Northland Drive, Suite 200
Mendota Heights, MN 55120

300623

Mortgage Registration Tax of \$252.08
has been paid in receipt 6-24-02
by Walter Myron County Treasurer
Counter signed by Nancy Chalstrom
Dorothy L. Threlkeld County Auditor
by Susan Anderson Deputy

OFFICE OF COUNTY RECORDER
STATE OF MINNESOTA
COUNTY OF ISANTI

This is to certify that this instrument was filed in
this office on the 24th day of June
2002 A.D. at 2:25 o'clock P M.
and was recorded as Document No.

PD \$ 20 300623

By Susan Anderson County Recorder
Dep.

Progressive

(Space Above This Line For Recording Data)

Loan Number:
11493640

MORTGAGE

Record and Return to:
Saxon Mortgage Services, Inc
4708 Mercantile Drive
Ft. Worth, Texas 76137

THIS MORTGAGE ("Security Instrument") is given on June 19, 2002
The mortgagor is
Ann Marie Kuehn, AKA Ann Kuehn, an unmarried woman

("Borrower"). This Security Instrument is given to
Saxon Mortgage, Inc

which is organized and existing under the laws of the State of Virginia, and whose
address is 27121 Towne Centre Drive, Suite 230
Foothill Ranch, California 92610 ("Lender"). Borrower owes Lender the principal sum of
One Hundred Nine Thousand Six Hundred and 00/100ths

Dollars (U.S. \$109,600.00).

This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which
provides for monthly payments, with the full debt, if not paid earlier, due and payable on
July 1, 2032 and for interest at the yearly rate of 7.525

percent. This Security Instrument secures to Lender: (a) the repayment of
the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the
payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security

MINNESOTA-Single Family-FNMA/FLMC UNIFORM INSTRUMENT

Form 3024 B/02
Amended 5/04
Page 1 of 3

Form 3024 B/02
Amended 5/04
Initials: AK

VMP MORTGAGE FORMS - (800) 821-7291

305538

OFF OF COUNTY RECORDER
STATE OF MINNESOTA
COUNTY OF ISANTI

This is to certify that this instrument was filed in
this office on the 18 day of 09
2002 A.D. at 1:00 o'clock P.M.
and was recorded as Document No.
PD 20 **305538**

By JA James R. Anderson
County Recorder Dep.

PROCESSED

ASSIGNMENT OF MORTGAGE

FOR VALUABLE CONSIDERATION,

Saxon Mortgage, Inc.
4880 Cox Road, Glen Allen, Virginia 23060

, a Corporation existing under the laws of
The State Of Virginia, Assignor (whether one or more), hereby sells, assigns and transfers to
BANKERS TRUST COMPANY, AS CUSTODIAN

, Assignee
(whether one or more), the Assignor's interest in the Mortgage dated June 19, 2002
executed by
Ann Marie Kuehn, aka Ann Kuehn, an unmarried woman

as Mortgagor, to Saxon Mortgage, Inc

as Mortgagee, and filed for record June 24, 2002, as Document Number 300623
(or in Book of Page), in the Office of the (County Recorder)
(Registrar of Titles) of ~~Chicago~~ Isanti County, Minnesota, together with all
right and interest in the note and obligations therein specified and the debt thereby secured. Assignor covenants
with Assignee, its successors and assigns, that there is still due and unpaid of the debt secured by the Mortgage
the sum of
One Hundred Nine Thousand Six Hundred and 00/100ths

DOLLARS, with interest thereon from August 1, 2002, and that Assignor has good
right to sell, assign and transfer the same.

Prepared By:
Saxon Mortgage, Inc.
4880 Cox Road
Glen Allen, Virginia 23060
Loan Number: 11493640

ASSIGNOR
Saxon Mortgage, Inc.
By David L. Ferguson
David L. Ferguson
Its Assistant Vice President

By _____
Its

THE STATE OF California)
COUNTY OF Orange)

This instrument was acknowledged before me on June 19, 2002 by
David L. Ferguson and
as Assistant Vice President of Saxon Mortgage, Inc. as Assistant Secretary of
Saxon Mortgage, Inc.

Commission Expiration: April 20, 2004

Signature of Person Taking Acknowledgment

See attached
Kimberly D. Shouse
(Typed or printed name)

Notary Public Title or Rank
Serial Number, if any

Minnesota Assignment of Mortgage 3/97

LSM 895(MN) (8703) 1
VMP MORTGAGE FORMS - (800) 521-7291

UNITED STATES BANKRUPTCY COURT

DISTRICT OF MINNESOTA

In Re:

Case No. 04-43746-RJK
Chapter 13

Ann Kuehn,

Debtor(s)

MEMORANDUM OF LAW

Deutsche Bank Trust Company Americas Custodian, fka Bankers Trust Company as Custodian ("Movant"), submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Movant holds a valid, duly perfected mortgage on real property owned by the Debtors. On the date this case was filed, the Debtor(s) were delinquent in respect of payments due under the note and mortgage. Since this case was filed, Debtor(s) are in arrears in the total amount of \$3,017.06.

ARGUMENT

1. Under Section 362.(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such creditor." 11 U.S.C. Sec. 362 (d) (1). The Debtor(s) in this case have failed to make the payments required by the note and mortgage for a period of more than 1 month. Debtor(s) have not otherwise provided Movant with adequate protection of its interest in the property. Such circumstances constitute cause, within the meaning of Section 362 (d) (1), justifying relief from the stay. In Re Video East, Inc., 41 B. R. 176 (Bkrcty. E. D. Pa. 1984); In Re Frascatore, 33 B. R. 687 (Bkrcty. E. D. Pa. 1983).

2. Pursuant to Section 362 (d) (2) of the Bankruptcy Code, relief from the stay is also appropriate where Debtor(s) have no equity in the subject property and the property is not necessary to an effective reorganization. 11 U.S.C. Sec. 362 (d) (2). See, In Re Gellert, 55B.R. 970 (Bkrcty. D. N. H. 1983). In the present case the balance due Movant on the note and mortgage is \$118,033.66. [The property is encumbered by a second mortgage in favor of TCF National Bank in the approximate amount of \$11,600.00.]

Accordingly, Movant is entitled to an order terminating the stay and authorizing it to foreclose its mortgage on the property.

Dated: 10.12.04.

Respectfully submitted,
SHAPIRO & NORDMEYER, L.L.P.

Signed: /e/ NANCY A. NORDMEYER
Nancy A. Nordmeyer-121356
Lawrence P. Zielke-152559
Attorney for Movant
7300 Metro Boulevard #390
Edina, MN 55439-2306
(952) 831-4060

SWORN CERTIFICATE OF SERVICE

STATE OF MINNESOTA)
) SS
COUNTY OF HENNEPIN)

I, **Stephanie Pilegaard** says that on October 12, 2004, I mailed copies of the annexed Memorandum of Law, Proposed Order for Relief from Stay, Notice of Hearing and Motion for Relief from Stay and Certificate of Service on the following interested parties at their last known address, by mailing to them, via first class mail, a copy thereof, enclosed in an envelope, postage prepaid and by depositing the same in the post office at Edina, Minnesota.

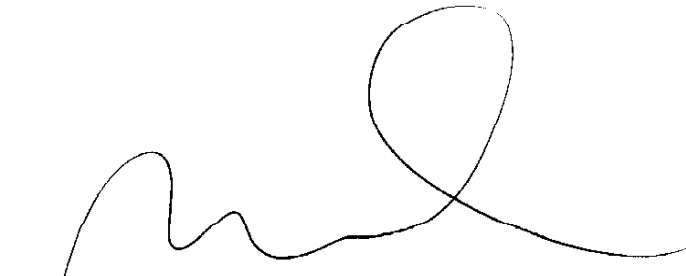
Ann Kuehn
517 North Ashland Street
Cambridge, MN 55008

Stephen Heller, Esq.
606 25th Ave South STE 110
St. Cloud, MN 56301

Jasmine Z. Keller, Trustee
12 South 6th Street, #310
Minneapolis, MN 55402

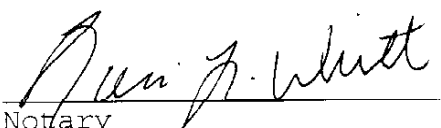
U.S. Trustee
1015 U.S. Courthouse
300 South 4th St.
Minneapolis, MN 55415

TCF National Bank
PO Box 1501
Minneapolis, MN 55480-1501

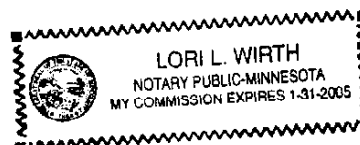


Stephanie Pilegaard

Subscribed and sworn to before me October 12, 2004.



Notary



04-28348
11493640

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Case No. 04-43746-RJK

Ann Kuehn,
Debtor(s)

ORDER FOR RELIEF FROM STAY

The above-entitled matter came for hearing on November 4, 2004.

THIS CAUSE coming to be heard on the Motion of Deutsche Bank Trust Company Americas as Custodian, fka Bankers Trust Company as Custodian, a creditor in the proceeding, the Court having jurisdiction, due notice having been given, and the Court having been advised in the premises;

IT IS HEREBY ORDERED,

That the automatic stay heretofore entered in this case is modified to the extent necessary to allow Deutsche bank Trust Company Americas as Custodian, fka Bankers Trust Company Custodian its successors and/or assigns, to foreclose in accordance with state law, the mortgage on the real property commonly known as:

Lot 3, Block 2, Lynn Mar Addition

NOTWITHSTANDING Federal Rule of Bankruptcy Procedure 4001 (a)(3), this order is effective immediately.

Dated: _____

BY THE COURT:

Judge of Bankruptcy Court